IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2571 of 2003
To
FIRST APPEAL No.2582 of 2003
WITH
CROSS OBJECTION No.44 of 2004
TO
CROSS OBJECTION No.55 of 2004.

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT & ANOTHER - Appellants
Versus
ARVINDBHAI MATHURBHAI PATEL & ORS. - Respondents

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Appearance :
MR RC KODEKAR, AGP for Appellants.
MR KM SHETH for Claimants.
MR AD OZA for Acquiring Body.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 04/05/2006
COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. All the abovenumbered appeals filed under

Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, as well as Cross Objections filed under Order XLI, Rule 22 of the Code of Civil Procedure, 1908, arise out of common judgment and award dated January 31, 2003 rendered by the learned 2nd Joint Civil Judge (S.D.), Vadodara, in Land Reference Case Nos.324 of 1995 to 329 of 1995 as well as Land Reference Case Nos.468 of 1995 to 473 of 1995, by which the claimants have been awarded additional compensation at the rate of Rs.9.10 paise per square metre over and above compensation of Rs.1.50 paise per square metre offered by the Special Land Acquisition Officer for their lands acquired.

2. A proposal was made to the State Government to acquire lands of Village: Ganeshpura, Taluka: Vaghodia, District: Vadodara for public purpose of construction of Narmada Canal. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Ganeshpura were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Act was issued, which was published in the Government Gazette on June 5, 1992. The owners of the lands were served with the notices. They opposed the proposed

acquisition of their lands. After considering their objections, the Special Land Acquisition Officer submitted his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Ganeshpura were needed for public purpose of construction of Narmada Canal. Therefore, a declaration under Section 6 of the Act was made, which was published in the Government Gazette on January 9, 1993. The interested persons were thereafter served with the notices under Section 9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 25/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs. 1.50 paise per square metre. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they made written applications requiring the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of compensation. Accordingly, references were made to the

District Court, Vadodara, which were numbered as noticed earlier.

3. On behalf of the claimants, two witnesses were examined in support of their case for enhanced compensation. They were (1) Arvindbhai Mathurbhai Patel, who was examined at Exhibit 16 and (2) Harjivanbhai Mohanbhai Patel, who was examined at Exhibit 25. The witnesses examined by the claimants stated before the Court that the lands acquired were fertile and that the claimants were taking crops like cotton, tuver, paddy, wheat, pulses, groundnuts, etc. In support of this case, the witnesses produced abstract of Village Form No.7/12 at Exhibit 17. It was further stated by the witnesses that facility of supply of water was available to the lands of the claimants, which were acquired. To prove this assertion, a certificate issued by Ganeshpura Amreshwar Juth Gram Panchayat was produced at Exhibit 24. It was further claimed by the witnesses that in the year 1991-92, the witnesses had grown crop of cotton, tuver and juvar in the acquired lands and that quantity of cotton grown was 5 to 6 quintals, whereas that of tuver was 5 quintals. According to the witnesses, the market price of the cotton per quintal was Rs. 1,200/-, whereas

that of tuver was Rs. 1,000/-, whereas the price of juvar per quintal was Rs. 500/-. In order to substantiate this claim, certificate issued by Vaghodia Dabhoi Agricultural Produce Market Committee was produced at Exhibit 18. According to the witnesses, village Ganeshpura had all the facilities, namely road, water, electricity, telephone, primary school, private hospital, etc. and that the market value of the lands situate in village Ganeshpura was Rs.1 Lakh per *vigha*. What was maintained by the witnesses before the Court was that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate and that the claimants were entitled to enhanced compensation.

4. The witnesses examined by the claimants were cross-examined by the learned Government Pleader, appearing for the State Government. However, the claim made by the claimants that they were taking different crops in one year and that the price of different crops was as mentioned in Exhibit 18, could not be demonstrated to be untrue.

5. On behalf of the Special Land Acquisition Officer, one Mr.Pradeepsinh Chhatrasinh Thakor was

examined at Exhibit 29 whereas Mr.Ramanbhai Lallubhai Parmar was examined at Exhibit 33 by the acquiring body. Though they had tried to justify the offer of compensation made by the Special Land Acquisition Officer, they had to admit that they had no personal knowledge about the fertility of the lands acquired and real market value of the lands acquired.

6. On appreciation of evidence, the Reference Court has come to the conclusion that the claimants were taking three crops in a year, total income of which was Rs. 17,000/- per year. According to the Reference Court, from the average income, so calculated, 10% was required to be deducted and after deducting 10% from the average income, the Reference Court deducted 50% towards cost of cultivation, which was further divided by three. In ultimate analysis, the Reference Court was of the view that the claimants were entitled to get total compensation at the rate of Rs. 10.6p paise per square metre by the judgment and award dated January 31, 2003, which has given rise to the abovereferred to appeals and Cross Objections.

7. This Court has heard Mr. R.C.Kodekar, learned

Assistant Government Pleader appearing for the appellants, as well as Mr. K.M.Sheth, learned counsel appearing for the claimants in each appeal as well as cross objection, and Mr. A.D. Oza, learned counsel for the acquiring body in each appeal as well as in cross objection, at length and in great detail. This Court has also considered the evidence produced by the parties on the record of the case.

8. The principles as to how compensation should be determined are laid down by the Supreme Court in the case of **Special Land Acquisition Officer, Davangere vs. P. Veerabhadarappa & Others, AIR 1984 SC 774**. After considering the provisions of Section 23 of the Act and decisions on the point, the Supreme Court has held as under:-

> *"The function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4(1) and, the methods of valuation may be :(1) Opinion of experts; (2) The prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) A number*

of years' purchase of the actual or immediately prospective profits of the lands, acquired. Normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available. In valuing land or an interest in land for purposes of land acquisition proceedings, the rule as to number of years' purchase is not a theoretical or legal rule but depends upon economic factors such as the prevailing rate of interest in money investments. The return which an investor will expect from an investment will depend upon the characteristic of income as compared to that of idle security. The main features are (1) Security of income; (2) fluctuation; (3) chances of increase; (4) cost of collection etc. The most difficult and yet the most important and crucial part of the whole exercise is the determination of the reasonable rate of return in respect of investment in various types of properties. Once this rate of return and accordingly the rate of capitalization are determined, there is no problem in valuation of the property. The principle is that the basic factor in applying the method of capitalization of income for ascertaining the market value of property is the rate of return that an ordinary investor

would reasonably get on his investment, having due regard to all the relevant circumstances. It would be unrealistic to adhere to the traditional view of capitalized value being linked with gilt-edged securities when investment in fixed deposits with nationalized banks. National Savings Certificates, Unit Trusts and other forms of Government securities and even in the share market in the shape of blue chips command, a much greater return. More secure the capital and regular the return, lesser rate of interest. Most secured kind of investment is Government securities or deposits with scheduled banks or Unit Trusts or National Savings Certificates.

In regard to investment in agricultural lands, there are many imponderables inasmuch as the investor runs a much greater risk than the risk that he runs in investment in housing which consists in vagaries of weather and other uncertainties. There is no security of principal, no liquidity of investment nor any certainty of income. The appreciation of principal or income is also uncertain. The reasons for these is that agricultural lands are not readily transferable under the various land reform legislations e.g. Laws relating to ceiling on agricultural holdings under the existing State laws and tenancy laws which place restrictions on transfer of such lands with concomitent danger of effacement of the

rights of the absentee-landlords and the creation of rights in the tillers of the soil. In evaluating the rate of return which would ordinarily satisfy an investor in such a property, the risk factor has further to be evaluated. There may be total or partial failure of crops either through failure of rain or drought, or inadequate or excessive rain fall. There may be a failure of crops on account of locust invasion or insects or pests. The cost inputs such as seeds, water, fertilizer, labour charges etc. would vary from year to year. If the overall cost goes up, the income from agricultural produce would be comparatively less. The fluctuations in price of agricultural produce introduce a great deal of uncertainty in regard to the income that can be expected from the sale of the produce. If the yield of the crop in other producing countries is large or the market prices prevailing in such countries are low, the prices of such agricultural produce in India would go down. In view of these considerations, an investor would expect a much higher rate of return so that the risk factor is properly discounted. In the premises, when the rate of return on investment was 8.25% in the year 1971 and 1972 i.e. on the date of notification under S. 4(1) a person investing his capital in agricultural lands would ordinarily expect 2% to 3% more than what he could obtain from gilt-edged securities or other forms of safe

investment and therefore the proper multiplier to be applied for the purpose of capitalization could not in any event exceed 'ten'.”

9. In light of the principles laid down by the Supreme Court, the question will have to be determined whether just compensation has been awarded to the claimants by the Reference Court. The 7/12 abstract produced by the claimants would indicate that in some years, some claimants were growing one crop in a year, whereas some others were growing two crops in a year and some were growing three crops in a year. However, there is no manner of doubt that crops of cotton, tuver and juvar, etc. were being grown on the lands acquired. The witnesses examined by the claimants had asserted before the Court that each claimant was able to raise 5 quintals of cotton, 6 quintals of tuver and 7 quintals of juvar. The price of those crops is mentioned in Exhibit 18, which is certificate issued by Vaghodia-Dabhoi Agricultural Produce Market Committee. Therefore, this Court is of the view that the total income of three crops would be Rs. 15,500/-. As per the principle laid down by the Supreme Court, multiplier of ten will have to be applied in order to determine the value of the land by applying method of capitalizing return, which would come

to Rs. 1,55,000/- per *vigha*. As laid down by the Supreme Court, 50% has to be deducted towards the cost of cultivation. Therefore, if 50% is deducted from Rs. 1,55,000/-, the amount would come to Rs. 77,500/- per *vigha*. In order to find out average income of one crop, the said amount will have to be divided by three, which would indicate that the income from crop would be Rs. 25,833/- per *vigha* i.e. Rs.10.76 paise per square metre. Under these circumstances, the award passed by the Reference Court granting compensation to the claimants at the rate of Rs.10.60 paise per square metre cannot be regarded either as erroneous or contrary to the evidence on record. After applying the principles of law, as laid down by the Supreme Court, correctly to the facts proved, the Reference Court has awarded compensation to the claimants at the rate of Rs.10.60 paise per square metre. Under these circumstances, this Court is of the view that no case is made out by the appellants in First Appeal Nos.2571 of 2003 to 2582 of 2003 to reduce the same nor any case is made out by the claimants, who have filed Cross Objections Nos.44 of 2004 to 55 of 2004, to enhance compensation awarded by the Reference Court. Thus, both, i.e. the First Appeals and the Cross Objections, are liable to be dismissed.

10. For the foregoing reasons, the First Appeals fail and dismissed. So also the Cross Objections also fail and are dismissed. There shall be no orders as to costs.

[J.M.PANCHAL, J.]

[BANKIM N. MEHTA, J.]

Rajendra